



# DEPARTMENT OF CONSERVATION

## OFFICE OF MINE RECLAMATION

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### California Abandoned Mine Lands Forum

Wednesday, August 9, 2006

10:00 a.m. to 1:00 p.m.

#### Meeting Location

Eric W. Rood Administrative Center  
Empire Room (Second Floor)  
950 Maidu Avenue  
Nevada City, CA 95959

Toll-Free Conference Line Number: 800-593-7169

Password: 32068 (Leader's name if requested is Cy Oggins)

### AGENDA

<u>Time/Duration</u>	<u>Agenda Item</u>
10:00 (0:05)	1. <b>Welcome (Facilitator: Stephen L. Jenkins, Michael Brandman Associates)</b>
10:05 (0:05)	2. <b>Introductions &amp; Announcements/Collect Working Lunch Orders (Facilitator)</b>
10:10 (0:05)	3. <b>Review Agenda (All)</b>  Purpose: To review and adjust proposed Agenda to reflect member reports and/or updates since last meeting. Outcome: Agreement on Agenda order, topics and timing.
10:15 (0:45)	4. <b>Presentation on Nevada County Program For Addressing Identification of Abandoned Mines and 2000 foot Hazardous Waste Buffer Lands Per State Health and Safety Code Section 25221 (Tracy Gidel)</b>  Purpose: To share a specific example of how a County is implementing the requirements of Section 25221. Outcome: Committee member comments and suggestions on how this type of information might be shared with other Counties and used in obtaining funding for such projects.  (See attached Background Information on Section 25221 for this Agenda Item)
11:00 (0:45)	5. <b>Working Session with Tracy Gidel and Mind Manager Program to Identify Agency Abandoned Mine Land Processes (Tracy Gidel)</b>  Purpose: Forum participants expressed a desire to devote a Forum meeting to identify common links between agency programs in order to avoid competition and duplication of efforts and enhance agency collaboration.

Outcome: Tracy Gidel will facilitate a discussion that will resulting in inputting results of brainstorming process to identify overlaps and points of coordination between agency abandoned mine processes.

**11:45 (0:15) BREAK. PICK UP PRE-ORDERED LUNCHES FOR “WORKING LUNCH”**

**12:00 (0:30) 6. Continue Working Session with Tracy Gidel and Mind Manager Program to Identify Agency Abandoned Mine Land Processes.**

**12:30 (0:05) 7. Review Minutes of Previous Meeting (All)**

Purpose: To review the previous meeting minutes for completeness and accuracy.

Outcome: Provide any corrections to and/or address any questions about the minutes.

**12:35 (0:10) 8. Other Items / New Business (All)**

Purpose: To afford Members to discuss items of interest that are not on the formal Agenda.

**12:45 (0:05) 9. Summary of Action Items from Meeting (Facilitator)**

Purpose: To accurately summarize items from the meeting that require further action or discussion

Outcome: Develop list of items for further action, responsible party, and due date.

**12:50 (0:10) 10. Future Meeting and Agenda Ideas (All)**

Purpose: To discuss Committee ideas on location of next meeting on August 16, 2006, and suggested agenda items for discussion.

Outcome: Consensus on meeting location, potential agenda items, and Committee assignments (as needed).

**Future AML FORUM Meeting Dates (Quarterly/3RD Wednesday)**

<b>2006</b>	<b>2007</b>
<del>March 15, 2006</del>	February 21, 2007
<del>May 17, 2006</del>	May 16, 2007
August 9 2006	August 15, 2007
November 15, 2006	November 21, 2007

**1:00 ADJOURN**

## **Border Zone Property**

### **SUMMARY**

As more people move into the foothills and desert regions of the state, the likelihood that they will come into contact with abandoned mine sites increases. In addition to physical safety hazards, many abandoned mine sites have soil or water contamination from heavy metals and other chemicals used in the mining process. The potential for increased human contact with these contaminated sites was addressed in the Hazardous Waste Property/Border Zone Property Statute.

The Border Zone Property (BZP) Statute was enacted in 1980. The statute is contained in the California Health and Safety Code, Chapter 6.5, Article 11, Section 25221. The intent of this statute is to prevent new, incompatible land uses within 2,000 feet of a site contaminated with hazardous waste and where there is a potential for human exposure to hazardous substances that could cause significant health risks. Specifically, it applies to residences, hospitals, K-12 schools, day care centers for children, and any permanently occupied human habitation (jails, parsonages, residential guard facilities, etc.).

If a property is suspected of being within 2,000 feet of a hazardous waste property, then the land owner, lessor, lessee, or city and county officials can request that a determination be made by the Department of Toxic Substances Control (DTSC). A determination is a decision by the DTSC that, after analysis and evaluation of the site, the property should be designated a hazardous waste property or border zone property. If such a designation is made, land use restrictions may be implemented.

### **OTHER INFORMATION**

For more information on border zone property, contact the Department of Toxic Substances Control. Here is the link regarding the DTSC Workshop that Tracy referenced.

"Randy Adams" <RAdams@dtsc.ca.gov>

[http://www.dtsc.ca.gov/SiteCleanup/upload/Local-Agencies\\_Workshop\\_Flyer.pdf](http://www.dtsc.ca.gov/SiteCleanup/upload/Local-Agencies_Workshop_Flyer.pdf)

## **CALIFORNIA ABANDONED MINE LANDS FORUM PREVIOUS DISCUSSIONS OF BUFFER ZONE ISSUE**

### **California Abandoned Mine Lands Forum May 18, 2005 Meeting Notes**

#### **IV. Presentation: Border Zone Issues Relating to Mines by Tracy Gidel, Nevada County Department of Environmental Health.**

This presentation was actually partly about collective problem-solving, a desired shift in focus for the entire Forum approach...Tracy Gidel opened by stating three reasons he was there:

- To introduce the issue of hazardous waste and border zone property as covered in CH&SC Section 25221 with relationship to mining activity.
- To share the types and quality of information he has on former mining sites and the kind of additional data he still needs.
- To review with the group the use of this information and the possibility of other sources of more accurate information.

#### **California Health & Safety Code Section 25221:**

Tracy then shared the current statute language and illustrated the difficulty in consistent interpretation of the statute using several examples. The statute reads:

“(a) Any person as owner, lessor, or lessee who (1) knows, or has probable cause to believe, that a significant disposal of hazardous waste has occurred on, under, or into the land which he or she owns or leases or that the land is within 2,000 feet of a significant disposal of hazardous waste, and (2) intends to construct or allow the construction on that land of a building or structure to be used for a purpose which is described in subdivision (b) of Section 25232 within one year, shall apply to the department prior to construction for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.”

Tracy shared that the intent of the law is to limit human exposure to hazardous materials/waste by monitoring development in close proximity to impacted areas. This is accomplished by controlling the development of facilities with the proposed occupancies listed below, on hazardous waste property or within as much as 2000' of a hazardous waste property, ie. “border zone property.” Many parties are coming directly to Tracy's office vs. going through Dept. of Toxic Waste Control.

- Residences
- Hospitals
- Schools for persons under 21 years of age Day Care for children
- Any permanently occupied human habitation except those used for industrial purposes

**How Big is the Problem?:** Tracy stated that over the past 15 years there were 7352 new homes built in Nevada County. This equates to \$876,861,949 worth of residential development. Presently he has three lists of information on mining sites in Nevada County with over 3000 entries. Tracy believes other counties have the same issue. He shared several slides showing only a partial graphic plotting of hazardous sites that fall within a 2000-foot radius of the human health and safety buffers between hazardous waste and human presence. Tracy stated his concern that compliance with this statute could involve a substantial increased cost to development as well as a significant increase in review time for permit processing. He then walked the group through several recent examples of owners

applying for either a residential building permit or parcel map. The key question is: Is it a hazardous waste property or a border zone property? In order to answer the question, you must first do a records search to determine that there is a proximate mine, and how far away from the project property it is. Tracy explained that here the problem really begins, as often the data available is insufficient, there is no history or status information on the mine (e.g. type & extent of the mining operation).

- Step #1. Phase One assessment to determine the type and extent of the mining operation.
- Step #2. Possibly a Phase Two assessment to determine if there is hazardous waste on the mine site property that would require further review.
- Step #3. Request DTSC for determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

Tracy spent his remaining time in discussion with the group in two areas: what stakeholders would have a vested interest or concern about this problem? The idea here is to plan how to inform these stakeholders and leverage their assistance (financial or otherwise) in dealing with the potential workload impact border zone issues and compliance with Section 25229 by all California Counties. The group decided that while the California Realty Board and others are clearly relevant stakeholders, they need to get better definitions for key legal terms used in the statute before taking steps to educate others on the issues.

Randy Adams from DTSC agreed to contact his colleagues *Steve Becker and Sandy at DTSC by to ask them to provide more definite legal interpretation of statute language at the Forum's August meeting. The questions the group wants answered are:*

- (1) *What is "hazardous waste" for this code section?*
- (2) *What is a 'border zone'? and*
- (3) *What is "probable cause to believe"?*

The second problem-solving discussion centered around the need for more and better (up-to-date and detailed) information on mines to be used to comply with this statute. The group provided Tracy additional sources of mine information. The following information sources were mentioned but no further problem solving on data quality was conducted at this time:

- *Nevada Historical Society Library – indexed by mine name*
- *CERES*
- *Docushare – he can add electronic data e.g. individual APN numbers of all sites that fall within perimeters.*
- *Ask realtors what their sources of information are.*
- *DOC has several data base sources: (1)PAMP data set done with Water Board (100K production and lists potential contamination. (2) TOMS Point data set (typographically occurring mine symbols); (3) Forest Service data managed by DOC – limited info about private land on this database; (4)MAS/MILS, the old Bureau of Mines dataset.*
- *BLM's LR 2000 data base*
- *Title Companies?*
- *Steve and Sandy at DTSC are good contacts also*

**Note:** For more info, contact Tracy Gidel at (530) 265-1449 or [tracy.gidel@co.nevada.ca.us](mailto:tracy.gidel@co.nevada.ca.us)

## California Abandoned Mine Lands Forum August 24, 2005 Meeting Notes

### IV. Border Zone Definitions presented by Sandy Karinen - DTSC

This agenda item was a follow-up to Tracy Gidel's presentation at the **May 18, 2005** Forum meeting on his challenges with finding good data to help identify Border Zone issues. The group had discussed several 'next steps' to take after Tracy's presentation, but decided they first needed more clarity from DTSC on the actual meaning and/or intent of certain statutory language. Sandy Karinen of DTSC provided a handout with definitions, the Statutory Process, and the general steps for completing a Border Zone Property (BZP) Determination. She then went through it in detail with the group.

Additional notes about the handout and questions asked and answered were as follows:  
Under Definitions:

1. Hazardous Waste Property (HWP): With respect to the second portion of the definition (not referring to permitted facilities), a "HWP" is not officially a "HWP" until it has gone through a formal designation process which includes a public hearing. Past uses of a "source" site that could trigger the need to seek a HWP determination, and, therefore, consider the need to look at BZP include landfills, storage facilities that might have contained hazardous wastes or substances, manufacturing plants that may have generated hazardous wastes (even if not permitted), etc.
2. Border Zone Property: The definition uses the term "designated" which means that a public hearing has occurred and a formal determination has been rendered by DTSC and a written, signed deed restriction on the property (limiting the future use of that property to non-sensitive uses, i.e., only industrial/commercial) has been filed with the applicable county recorder's office and thus designating the specific property as a BZP. The deed restriction "runs with the land" and can only be removed by applying to DTSC through a formal process set out in the statutes.
3. Land Use Restrictions example: deed restrictions
4. Determination: a formal written decision rendered by DTSC on the property which does not include a public hearing
5. Designation: a formal written decision by DTSC, following a public hearing, which includes the implementation of a land use restriction (deed restriction)

Q: What is significant?

A: The term "significant" is not specifically defined in the law, but has been interpreted to mean that the "source site" of the "significant disposal of hazardous waste" poses a risk to human health and the environment based on a health risk evaluation. In other words, the risk assessment addresses the potential exposure pathways from the "source site" to the future residents on the proposed development site.

Q: Funding issues have interfered with enforcement of this Statute. If funding becomes available for more enforcement, will the DTSC retroactively pursue BZP determinations on land that has been developed?

A: Sandy was not prepared to answer at this time, but she mentioned that the intent of the law was to focus on future development and that there are enforcement provisions available within the statutes that an impacted party could pursue if they feel that they have been impacted.

Q: How can we determine when to do a determination with the quality of the datasets in the office?

A: You should not rely simply on a review of datasets. You need to physically visit the site before proceeding and especially before you decide to apply for a determination. The border zone property statutes became effective in 1981 and are applicable for proposed new development or a change in land use from prior industrial/commercial uses to proposed sensitive uses (residential, schools, children's day care, etc.). If the property has been developed after 1981 (involving sensitive uses only), then a determination could be requested retroactively. There have been no retroactive requests to date.

**V. Border Zone Next Steps Discussion:** Tracy Gidel mentioned that Nevada County developed a flier that is handed out to anyone seeking a building permit from the County.

Disclosure is required to be made by the Real Estate Industry. Carol Russell mentioned the lead disclosure required by Real Estate Agents does not apply exclusively to lead-based paints. Lahay reminded the group of some of the ideas from its last meeting, where a possible joint meeting with California realtor associations, etc. was discussed.

Someone else mentioned that making mortgage companies aware of the BZP issue may be useful since they have a tendency to reject loans if the property has a potential to lose value. During this meeting, additional ideas were kicked around, including pursuing possible funding by the Realty Board and other stakeholders of improvements to databases that could be used to more easily determine potential border zone properties. Some suggestion that arose for the current database that exist on mines:

- Expand the databases so that certain criteria can be used to make a decision on whether a determination is warranted.
- Look at the possibilities for creating a clearinghouse for this data
- Carol Russell mentioned that the USGS has lots of history on mining districts and some geo-environmental models

**Action Item:** The group wants to start first with an informal discussion of the issue before any additional funds are sought. A mention was made that the California Association of Realtors are meeting next month in San Diego, CA.

**An ad hoc group was developed** to pursue this as a first step. The members of this group are: Dave Lawler, BLM; Sandy Karinan, DTSC; Tracy Gidel, Nevada County.